

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

CONFIDENTIAL
TEX.SB/3023*
25 August 1994

Textiles Surveillance Body

ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

Notification under Articles 7 and 8

Bilateral agreement between the United States and Nepal

Note by the Chairman

Attached is a notification received from the United States of a bilateral agreement concluded with Nepal for the period 1 January 1994 to 31 December 1997.

This notification has been made pursuant to a request made by the Textiles Committee that agreements concluded with non-participants be notified.

*English only/Anglais seulement/Inglés solamente



216

UNITED STATES TRADE REPRESENTATIVE

1-3 AVENUE DE LA PAIX
1202 GENEVA, SWITZERLAND

August 11, 1994

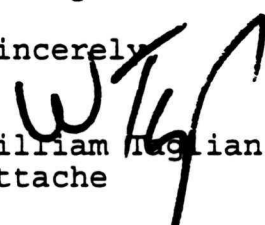
The Honorable
Ambassador Marcelo Raffaelli
Chairman, Textile Surveillance Body
General Agreement on Tariffs and Trade
Rue de Lausanne
1211 Geneva

Dear Ambassador Raffaelli:

Pursuant to the provisions of Article 7 and 8 of the Arrangement Regarding International Trade in Textiles, I am instructed by my government to inform the Textile Surveillance Body of a new selective bilateral textile agreement between the Government of the United States and the Government of Nepal.

Copies of the notes affecting this agreement are enclosed..

Sincerely,


William Tugliani
Attache

Enclosure

Note No. 113

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of His Majesty's Government of Nepal and has the honor to refer to the Bilateral Textile Agreement effected by exchange of notes on May 30 and June 1, 1986, as amended and extended (the Agreement), to the Memorandum of Understanding signed on November 3, 1993, and to the note of the Ministry of Foreign Affairs, His Majesty's Government of Nepal, dated December 2, 1993, numbered AC141-68/6126.

The Embassy confirms the acceptance of the Government of the United States of America of the proposal contained in the Ministry's note of December 2, 1993, confirming the provisions of the Memorandum of Understanding. This note, the note of His Majesty's Government of Nepal, and the Memorandum of Understanding as an integral attachment, shall constitute an agreement between our two governments.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

Embassy of the United States of America,
Kathmandu, July 22, 1994

Kingdom of Nepal
City of Kathmandu
Embassy of the United States of America } SS



I certify that this document is a true and faithful copy of the original, and that it has been carefully examined by me, compared with the said original, and found to agree with it word for word and figure for figure.

Rekha V. Arness

REKHA V. ARNESS
Second Secretary & Consul
United States of America

JUL 26 1994



MINISTRY OF FOREIGN AFFAIRS
HIS MAJESTY'S GOVERNMENT OF NEPAL
KATHMANDU

AC141-68 / 6126

The Ministry of Foreign Affairs, His Majesty's Government of Nepal, presents its compliments to the Embassy of the United States of America in Kathmandu and has the honour to refer to the bilateral textile agreement between His Majesty's Government of Nepal and the Government of the United States of America. The delegations of the two countries met in Kathmandu on November 2 and 3, 1993, and agreed to extend the bilateral textile agreement effected by exchange of notes on May 30 and June 1, 1986, as amended and extended.

During the consultations referred to above, an agreement was reached on several issues as reflected in the Memorandum of Understanding (MOU) signed by both heads of delegation on November 3, 1993. The full text of the MOU is an attachment to this note.

The Ministry now proposes that both governments agree to the provisions of the Memorandum of Understanding. If this is acceptable to the Government of the United States of America, this note and a note of confirmation from the Government of the United States of America shall constitute an agreement between the two governments.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

02 December 1993.

The Embassy of the United States of America
Kathmandu.



MEMORANDUM OF UNDERSTANDING

November 3, 1993

Representatives of His Majesty's Government of Nepal and of the Government of the United States of America met in Kathmandu November 2 and 3, 1993, and agreed to extend the bilateral textile agreement effected by exchange of notes on May 30 and June 1, 1986, as amended and extended to provide that apparel exports to the United States are not to exceed the following specific limits :

Category	Unit	1994	1995	1996	1997
340	Dozen	267,948	284,025	301,066	319,130
341	Dozen	860,680	912,321	967,060	1,025,084
342	Dozen	130,647	138,486	146,795	155,603
347/348	Dozen	603,541	639,753	678,138	718,826
640	Dozen	134,857	142,948	151,525	160,617
641	Dozen	304,069	322,313	341,652	362,151

Agreement Term:

1. The term of the agreement shall be extended for four years beginning from January 1, 1994 through December 31, 1997. Each full "agreement period" shall be a twelve-month period from January 1 of a given year to December 31 of that year.
2. Commencing with the first agreement period and during the subsequent term of this agreement, His Majesty's Government of Nepal shall limit annual exports from Nepal to the United States of textile products to the specific limits set out above. Such specific limits may be adjusted in accordance with paragraph 4.
3. (A) For the purposes of this agreement, textile products shall be classified as :
 - (i) Man-made fiber textiles, if the product is in chief weight of man-made fibers, unless :
 - (A) the product is knitted or crocheted apparel in which wool equals or exceeds 23 percent by weight of all fibers, in which case the product will be a wool textile; or
 - (B) the product is apparel, not knitted or crocheted, in which wool equals or exceeds 36 percent by weight of all fibers; in which case the product will be a wool textile;

- (C) the product is a woven fabric in which wool equals or exceeds 36 percent by weight of all fibers, in which case the product will be a wool textile.
- (ii) Cotton textiles, if the product is in chief weight cotton, or if cotton with wool and/or man-made fibers in the aggregate equals or exceeds 50 percent by weight of the component fibers thereof and the cotton component equals or exceeds the weight of each of the total wool and/or man-made fiber components, unless the product is a woven fabric in which wool equals or exceeds 36 percent by weight of all fibers, in which case the product will be a wool textile;
- (B) Coverage under this paragraph is intended to be identical with the terms of Article 12 of the Arrangement Regarding International Trade in Textiles and in conformance with paragraph 24 of the July 31, 1986 Protocol of Extension. In the event of a question regarding whether a product is covered by virtue of being in chief weight of cotton, the chief value of the fibers may be considered.
- 4. (A) During any agreement period, the specific limits may be exceeded by not more than six (6) percent swing, provided that a corresponding reduction in square meters equivalent is made in one or more other specific limits during the same agreement period.
- (B) His Majesty's Government of Nepal shall indicate to the Government of the United States the specific limit it intends to increase and which it wishes to decrease during each agreement period.
- (C) The extent to which any specific limit may be exceeded in any agreement period by carryover (the use of any unused meterage, i.e., shortfall, of the corresponding limit for the previous period) and/or carryforward (the borrowing of a portion of the corresponding limit from the succeeding agreement period) is eleven (11) percent, of which carryforward shall not constitute more than six (6) percent.

- (D) His Majesty's Government of Nepal will notify the Government of the United States when it wishes to use unused meterage (shortfall) available in categories for carryover and when it wishes to use carryforward, subject to the provisions set out above.
 - (E) No carryforward shall be available for application in the final agreement period.
 - (F) For the purposes of this agreement, a shortfall occurs when exports of textiles or textile products from Nepal to the United States during any agreement period are below any specific limit or, in the case of any limit decreased pursuant to paragraph 4, when such exports are below the limit as decreased.
5. Exports from Nepal in excess of authorized limits in any agreement period may be denied entry into the United States. Any such shipments denied entry may be permitted entry into the United States and charged to the applicable limit in the succeeding agreement period. The Government of the United States shall inform His Majesty's Government of Nepal of any such charges.
- (A) Products of Nepal shipped in excess of authorized limits in any agreement period will, if allowed entry, into the United States during that agreement period, be charged to the applicable limit in the succeeding agreement period.
 - (B) Any action taken pursuant to this paragraph shall not prejudice the rights of either government regarding consultations.
6. His Majesty's Government of Nepal shall use its best efforts to space exports to the United States within each category, subcategory, or part category evenly throughout each agreement period, taking into consideration normal seasonal factors.
7. His Majesty's Government of Nepal shall administer its export control system under this agreement. The Government of the United States may assist His Majesty's Government of Nepal in implementing the limitation provisions of this agreement by controlling imports, by the date of export, of textile products covered by this agreement.

8. His Majesty's Government of Nepal shall promptly supply the Government of the United States with data on ~~monthly~~ exports of textile products from Nepal to the United States. The Government of the United States shall promptly supply His Majesty's Government of Nepal with data on monthly imports of textile products into the United States from Nepal. Each government agrees to supply promptly any other available statistical data necessary to the implementation of this agreement.
9. Mutually satisfactory administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of this agreement, including differences in points of procedure or operation.
10. His Majesty's Government of Nepal and the Government of the United States agree, upon the request of the other, to consult on any question arising in the implementation of this agreement.
11. His Majesty's Government of Nepal and the Government of the United States may at any time propose revisions in the terms of this agreement. Each agrees to consult promptly with the other about proposals with a view to making such revisions to the agreement, or taking other appropriate action as may be mutually agreed upon.
12. If His Majesty's Government of Nepal considers that, as a result of the limitations specified in this agreement, it is being placed in an inequitable position in relation to a third country, His Majesty's Government of Nepal may request consultations with the Government of the United States with a view to taking appropriate remedial actions, such as a reasonable modification of this agreement.
13. His Majesty's Government of Nepal and the Government of the United States agree to continue a visa system covering all cotton and man-made fiber textile and apparel shipments to the United States.
14. The Government of the United States acknowledges the high degree of cooperation on the part of His Majesty's Government of Nepal with respect to efforts to prevent illegal transshipment, rerouting and false declaration of garments exported to the United States. However, in view of the global problem of textile transshipment, rerouting or false declaration, and in conformity with the practice of the Government

of the United States to incorporate standard anti-circumvention language in all bilateral textile agreements currently being renegotiated and concluded, His Majesty's Government of Nepal and the Government of the United States have agreed as follows :

- (A) The Government of the United States and His Majesty's Government of Nepal agree to take measures necessary to address, to investigate and, where appropriate, to take legal and/or administrative action to prevent circumvention of this agreement by transshipment, rerouting, false declaration concerning country of origin, falsification of official documents or any other means.
- (B) Both parties agree to cooperate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of the agreement to address problems arising from circumvention, and to establish the relevant facts in the places of import, export and, where applicable, transshipment. Such cooperation, to the extent consistent with domestic laws and procedures, will include investigation of circumvention practices; exchange of documents, correspondence, reports and other relevant information to the extent available; and facilitation of other measures needed to ascertain facts related to suspected circumvention of this agreement.
- (C) If either party believes that this agreement is being circumvented, it may request consultations to address the matter or matters concerned with a view to seeking a mutually satisfactory solution. Each party agrees to hold such consultations promptly, beginning within 30 days of a request by a party and concluding within 90 days of the request, unless extended by mutual agreement, and to cooperate fully in terms of the elements set out in subparagraph (B) above.
- (D) Should the parties be unable to reach a satisfactory solution in the course of the consultations called for under subparagraph (C), then His Majesty's Government of Nepal and the Government of the United States agree that in cases where evidence regarding circumvention has been provided, the United States may deduct

from the quantitative limits for that agreement period amounts at least equivalent to the amount of transshipped products of Nepalese origin. In addition, His Majesty's Government of Nepal and the Government of the United States agree that deductions from the quantitative limits established under this agreement may be made in those instances in which: i) the U.S. possesses substantive information showing that circumvention has occurred; ii) the U.S. has requested from Nepal cooperation or information relevant to the possible circumvention that is of a type that is available to or could reasonably be obtained by His Majesty's Government of Nepal, and iii) and His Majesty's Government of Nepal has not provided such information or cooperation within the period for consultation outlined in subparagraph (C).

- (E) Should the United States choose to exercise its rights under subparagraph (D) to deduct an amount or amounts from the quantitative limits of a country where repeated instances of circumvention have been demonstrated within the current or immediately preceding agreement year, then the United States may deduct from the quantitative limit amounts up to three times the amounts transshipped, provided that such deductions are distributed equally in each of the three following years.
- (F) Where there is evidence showing that goods originating in another country have been shipped through Nepal to the United States as though they were products of Nepal; then His Majesty's Government of Nepal and the Government of the United States agree to take appropriate action. Such action may include the introduction of restraints in the relevant category or categories or deducting the amount of goods so shipped from the quantitative limits established for the current agreement year under this agreement for shipments originating in Nepal. Any such actions, together with their timing and scope, may be taken after consultations held with a view of arriving at a mutually satisfactory solution. Such consultations should be held promptly, beginning within 30 days of a request by a party, and concluding within 90 days of the request, unless extended by

mutual agreement. Should the parties be unable to reach a satisfactory solution, then His Majesty's Government of Nepal and the Government of the United States agree that in cases where clear information regarding circumvention has been provided, the United States may introduce a restraint on where a restraint already exists, may deduct from the quantitative limits established under this Agreement an amount equivalent to the amount of product transshipped through Nepal.

- (G) Parties agree that false declaration concerning fiber content, quantities, description or classifications of merchandise also frustrates the objective of this Agreement. Where there is evidence that any such false declaration has been made for purposes of circumvention, both parties agree to take appropriate measures, consistent with their domestic laws and procedures, against exporters or importers involved. Should either party believe that this Agreement is being circumvented by such false declaration and that no, or inadequate, administrative measures are being applied to address and/or to take action against such circumvention, that party should consult promptly with the party involved with a view to seeking a mutually satisfactory solution. Such consultations should be held promptly, beginning within 30 days of a request by a party, and concluding within 90 days of the request, unless extended by mutual agreement. Should the parties be unable to reach a satisfactory solution, then His Majesty's Government of Nepal and the Government of the United States agree that in cases where evidence regarding such false declarations has been provided, then the United States may deduct from the quantitative limits established for the current agreement year an amount equivalent to the amount of product subject to the false declaration or classification. This provision is not intended to prevent parties from making technical adjustments when inadvertent errors in declarations have been made.

15. Either Government may terminate this agreement effective at the end of an agreement period, by written notice to the other government, to be given at least 90 days prior to the end of such agreement period.
16. This Memorandum of Understanding shall take effect upon exchange of notes between the two Governments.

Sd/-
D.P. Panday
For His Majesty's Government
of Nepal

Sd/-
Jennifer A. Hillman
For the Government of
the United States of America